

MONTANA LEGISLATIVE HISTORY

Chapter 214 1987

Bill H 267 S _____ Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) 1/29 _____ c

1/29 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 3/04 _____ c

_____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

HOUSE FINAL STATUS

3/23 SIGNED BY SPEAKER
 3/23 SIGNED BY PRESIDENT
 3/24 TRANSMITTED TO GOVERNOR
 3/27 SIGNED BY GOVERNOR
 CHAPTER NUMBER 240 EFFECTIVE DATE: 10/01/87

HB 267 INTRODUCED BY MERCER, ET AL.
 DUTY OF MENTAL HEALTH PROFESSIONALS TO WARN OF
 VIOLENT PATIENTS

1/17 INTRODUCED
 1/17 REFERRED TO JUDICIARY
 1/29 HEARING
 1/29 COMMITTEE REPORT--BILL PASSED
 1/31 2ND READING PASSED 92 2
 2/02 3RD READING PASSED 93 5

TRANSMITTED TO SENATE
 2/03 REFERRED TO JUDICIARY
 3/04 HEARING
 3/05 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/09 2ND READING CONCURRED 49 1
 3/11 3RD READING CONCURRED 46 4

RETURNED TO HOUSE WITH AMENDMENTS
 3/14 2ND READING AMENDMENTS CONCURRED 91 0
 3/17 3RD READING AMENDMENTS CONCURRED 93 3
 3/19 SIGNED BY SPEAKER
 3/20 SIGNED BY PRESIDENT

3/21 TRANSMITTED TO GOVERNOR
 3/25 SIGNED BY GOVERNOR
 CHAPTER NUMBER 214 EFFECTIVE DATE: 10/01/87

HB 268 INTRODUCED BY THOMAS
 CONTINGENT FEE NOT BASED ON PART OF AWARD DUE PERSON
 OTHER THAN PLAINTIFF

1/17 INTRODUCED
 1/17 REFERRED TO JUDICIARY
 2/03 HEARING
 2/03 TABLED IN COMMITTEE

HB 269 INTRODUCED BY JONES, ET AL.
 INCREASING MAXIMUM TRUCK HEIGHT

1/17 INTRODUCED
 1/17 REFERRED TO HIGHWAYS & TRANSPORTATION
 1/29 HEARING
 1/29 COMMITTEE REPORT--BILL PASSED
 1/31 2ND READING PASSED 90 3
 2/02 3RD READING PASSED 94 4

TRANSMITTED TO SENATE
 2/03 REFERRED TO HIGHWAYS & TRANSPORTATION
 2/17 HEARING
 2/18 COMMITTEE REPORT--BILL CONCURRED
 3/02 2ND READING CONCURRED 47 0
 3/04 3RD READING CONCURRED 50 0

RETURNED TO HOUSE
 3/06 SIGNED BY SPEAKER
 3/07 SIGNED BY PRESIDENT

HOUSE BILL NO. 267

INTRODUCED BY MERCER, MAZUREK, HANSEN

IN THE HOUSE

JANUARY 17, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 29, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 30, 1987	PRINTING REPORT.
JANUARY 31, 1987	SECOND READING, DO PASS.
FEBRUARY 2, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 93; NOES, 5.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 3, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 5, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 9, 1987	SECOND READING, CONCURRED IN.
MARCH 11, 1987	THIRD READING, CONCURRED IN. AYES, 46; NOES, 4.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 14, 1987	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.

MARCH 17, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1
2 INTRODUCED BY House BILL NO. 267
3 MERCER Margaret Stapp

4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A DUTY TO WARN
5 POTENTIAL VICTIMS OF A PATIENT'S VIOLENT BEHAVIOR AND
6 GRANTING IMMUNITY FROM LIABILITY UNDER CERTAIN CIRCUMSTANCES
7 TO MENTAL HEALTH PROFESSIONALS."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Definition. As used in [sections 1 through
11 3], "mental health professional" means:

12 (1) a certified professional person as defined in
13 53-21-106;

14 (2) a physician licensed under Title 37, chapter 3;

15 (3) a professional counselor licensed under Title 37,
16 chapter 23;

17 (4) a psychologist licensed under Title 37, chapter
18 17; or

19 (5) a social worker licensed under Title 37, chapter
20 22.

21 Section 2. Duty to warn of violent behavior. A mental
22 health professional has a duty to warn of or take reasonable
23 precautions to provide protection from violent behavior only
24 if the patient has communicated to the mental health
25 professional an actual threat of physical violence by

1 specific means against a clearly identified or reasonably
2 identifiable victim. The duty is discharged by a mental
3 health professional if he has:

4 (1) made reasonable efforts to communicate the threat
5 to the victim or notify the law enforcement agency closest
6 to the patient's or the victim's residence of the threat of
7 violence; and

8 (2) supplied a requesting law enforcement agency with
9 any information he has concerning the threat of violence.

10 Section 3. Immunity from liability. (1) No monetary
11 liability and no cause of action may arise against any
12 mental health professional for failing to predict, warn of,
13 or take precautions to provide protection from a patient's
14 threatened violent behavior unless he has a duty to warn of
15 violent behavior, as provided in [section 2].

16 (2) No monetary liability and no cause of action may
17 arise against any mental health professional for disclosing
18 confidential or privileged information in an effort to
19 discharge a duty arising under [section 2].

20 Section 4. Codification instruction. Sections 1
21 through 3 are intended to be codified as an integral part of
22 Title 27, chapter 1, and the provisions of Title 27, chapter
23 1, apply to sections 1 through 3.

-End-

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
240	1/27/87	1/27/87	2/19/87			2/19/87					
241	1/16/87	1/28/87	2/12/87			2/12/87					
256		2/12/87	2/14/87			2/14/87					
262	1/17/87	2/5/87	2/12/87	2/12/87							
267	1/17/87	1/29/87	1/29/87	1/29/87							
268	1/17/87	2/3/87	2/3/87	tabled							
283	1/19/87	1/30/87				2/5/87					
284	1/19/87	1/30/87	2/19/87			2/19/87					
286	1/19/87	2/6/87				2/23/87					
291	1/19/87	1/27/87	Referred to Highways Committee.								
301		2/5/87	failed to meet deadline								
305	1/20/87	2/5/87	2/6/87	2/6/87							
309	1/20/87	1/29/87	2/3/87			2/3/87					
316	1/20/87	1/28/87				2/19/87					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 29, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 29, 1987, at 8:00 a.m., in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Grady, Hannah and Brown who were absent, and Rep. Rapp-Svrcek who was excused.

HOUSE BILL NO. 309: Rep. Quilici, District No. 71, sponsor, stated HB 309 revises the crime victims compensation act of Montana. He explained in 1976, there was a committee formed by the Montana Association of Churches, and others, to look into a study on victims of crime and also the offenders. After a one year study, a bill was drafted which is the Victims Compensation Program. HB 309 will transfer the program from the Workers' Compensation Division. There are not any guidelines changed in this bill. It is set up to help with administration costs, fine tune it and make for a better program. An appeal from a department determination concerning a claim will be made to the district court and provides for confidentiality of certain records.

PROPOSERS: CHERYL BRYANT, Crime Victims Program, supported this legislation.

MIKE LAVIN, Administrator for the State Board of Crime Control, stated that the passage of this bill will make a good program better.

LENORE F. TALIAFERRO, Family Abuse Specialist for the Friendship Center, Helena, pointed out that in the past year there have been services provided for about 500 clients. The Center's program currently receives some funding through the Board of Crime Control and it is very important funding to their services. She strongly urged support for this legislation.

TOM HARRISON, representing the Sheriff and Peace Officers Association, supported this transfer of funds and supported HB 309.

BILL WARE, Helena Police Chief, supported this legislation.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 309: Rep. Addy asked Rep. Quilici how much money was collected in a year and he stated that the budget is around \$430,000.00. Rep. Quilici said there might be attempts to take some of the funds and help support the general fund but he would oppose that.

Rep. Daily asked Rep. Quilici to briefly describe where the money comes from. He stated the money comes from the Highway Patrol fine program and 18% of each citation goes into the victims compensation program.

Rep. Quilici closed the hearing on HB 309.

HOUSE BILL NO. 267: Rep. Mercer, sponsor, District No. 50, stated that he needs to first describe the problem and then he can explain what the bill deals with. He explained that if there is a situation where a mental health professional is serving an individual who is a client and that client makes a specific threat of physical harm to an individual and informs the mental health professional about it, the professional then has a confidentiality duty not to disclose that threat to anyone but yet there is a fear that if they do not disclose that threat, and the threat is carried through, they will get into trouble. This bill addresses that issue and makes it clear when the mental health professionals have the duty to warn and also how they can discharge that duty. The duty arises when the actual threat of physical violence is by a specific means. The professional has the duty to warn of violent behavior or take reasonable precautions to provide protection from violent behavior only if the patient has communicated to the mental health professional an actual threat of physical violence by specific means against a clearly identified or reasonably identifiable victim. The professional must also supply the requesting law enforcement agency with any information he has concerning the threat of violence. He pointed out that section 3 deals with the immunity issue and it says there is no liability for failure to protect or warn or take precautions to provide protection from a patient's threatened violent behavior unless he has a duty to warn of violent behavior.

PROPOSERS: STEVE WALDRON, Mental Health Centers in Montana, stated that an essential part of therapy is open communication with the client. The Supreme Court of California acknowledged that confidentiality is essential but went on to say that professionals should be able to single out the real threats and predict dangerous threats. The best predictor of violence is whether or not a person has been violent in the past. This bill established liability for mental health professionals and tells when the

confidentiality must be broken. He pointed out that in the child abuse reporting statute, 41-3-201, it requires a professional to break confidentiality when they become aware of child abuse. The statute does not have a requirement that you tell children when you are treating them that you may break confidentiality. There seems to be some areas that need amending in regard to confidentiality.

CLIFF MURPHY, Mental Health Association of Montana, submitted an amendment in regard to the duty to warn. (Exhibit A). He stated they favor the bill with the amendment.

ROBERT BATEEN, Psychologist, Helena, representing the Montana Psychological Association, stated they must do whatever is necessary to protect a patient from carrying through with a violent act and this bill allows them to effectively do that. He disagreed with the proposed amendment because it has been already covered under the code of ethics.

JOAN REBICH, Vice President of the Montana Mental Health Counselors Association, favored the bill and did not think the amendment was necessary.

DAVID BRIGGS, Executive Director of Region 4 Community Health Center, Helena, supported the legislation.

NANCY ADAMS, Montana House Director for the Seriously Mentally Ill, Helena, supported the bill. It is their duty to protect the person who is threatening to hurt somebody. She urged that no amendments be made to the bill.

CRAIG SIMMONS, Licensed Social Worker in the private practice of child and adult therapy, representing the Montana Chapter of National Association of Social Workers, supported HB 267 as it is written.

CURT CHISOLM, Deputy Director of the Department of Institutions, supported the legislation. He stated he has one concern and that is it applies to both public and private employees and the bill limits liability. It would have to pass with 2/3 majority in both Houses.

OPPONENTS: TOM POSEY, Executive Director of Montana Mental Health Consumer Advocate Project, stated he is not in opposition to the bill in theory, but does oppose it as presently written. He said it may protect the professional but turns around and places the client in jeopardy. Mental health consumers have falsely assumed that the right of confidentiality between them and their therapist is virtually the confidentiality of the confessional. Consequently, they felt there could be no breach, as such, unless they are

warned. He felt a warning would be heeded. He also felt the amendment should be considered.

SUZANNE TAUNT, President of the Montana Alliance for the Mentally Ill, favors the bill for the protection of the mental health professionals for the liability involved. The Alliance also favors the amendment to protect the rights of the consumer or the client.

QUESTION (OR DISCUSSION) ON HOUSE BILL NO.267: Rep. Gould asked Mr. Murphy about the amendment in regard to adopting it because it seemed to him that the number one problem is to get information in order to get to the root of a client's problem; the amendment would make it harder to get information needed to treat the problem. Mr. Murphy explained that he tried to meet that objection. It would not make it too much more difficult. Rep. Gould also asked Mr. Waldron the same question. Mr. Waldron stated that you may be able to give a warning to a client in the onset of dealing with him but in a case where you have an emergency call, it would be impossible to give a warning, especially in a suicide case. The amendment tells the professional that they have to stop the emergency caller and tell them the professional will have to call the police if they are planning to commit a violent act. This can be a real problem. The focus of the bill, only in part, is to protect the professional. The main focus is to allow the professional to protect individuals from possibility of violent acts by a client. The third party must be protected first.

Rep. Strizich asked Mr. Murphy if the particular amendment has the full support of your association or just drafted on their behalf. Mr. Murphy stated that the association is made up of a great many members and the board acts upon all the issues that the organization faces. The Board did recommend the amendment.

Rep. Mercer closed the hearing by stating that the first issue that needs to be addressed is whether or not it is good public policy to require mental health professionals to disclose this information and it would be his viewpoint, that it is. The second issue is do they need to put the amendment on the bill and in his viewpoint, it is a bad idea. Primarily because warnings may set back a client. There are certain times when a professional may want to disclose this warning to a client and the professional will know the situations where that needs to happen. He stated this is a good piece of legislation and hoped all would support it.

10

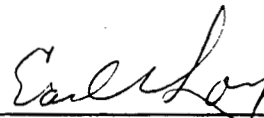
EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 188: Rep. Daily moved, DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously.

ACTION ON HOUSE BILL NO. 322: Rep. Eudaily moved an amendment to take "a" out of page 3, line 18. Question was called and a voice vote was taken. The motion PASSED unanimously. Rep. Eudaily moved DO PASS AS AMENDED. Question was called. Rep. Darko asked Rep. Eudaily about the limitation of the bill in regard to game wardens being in short supply. She asked him if law enforcement officers could also make arrests and he stated they can. Chairman Lory asked Mr. MacMaster to explain the Statement of Intent. Mr. MacMaster stated that the Statement of Intent needed to be rewritten before the bill was reported out of committee. Rep. Daily asked Rep. Eudaily if it was his intention to have this apply to motor boats, floating and all water activities. Rep. Eudaily said he thought it applied to all water activities. Rep. Daily stated he sees a potential for abuse to this because floaters will more than likely have a few beers while floating and he could see a lot of people being arrested. He preferred that this bill apply only to boaters. Rep. Eudaily stated he assumed the department was just trying to do something about the safety of the people on the lake and put standards in. Rep. Eudaily requested that the bill be held until he can discuss this with the department and he withdrew his motion. The bill is still in committee.

ACTION ON HOUSE BILL NO. 267: Rep. Gould moved HB 267 DO PASS. Question was called. A voice vote was taken and the motion CARRIED unanimously.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 9:45 a.m.



EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 29, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)		✓	
PAUL RAPP-SVRCEK (D)			✓
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

JANUARY 23,

19 87

JUDICIARY

Mr. Speaker: We, the committee on _____

report **HOUSE BILL NO. 267**

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

"AN ACT IMPOSING A DUTY TO WARN POTENTIAL VICTIMS OF A PATIENT'S VIOLENT BEHAVIOR AND GRANTING IMMUNITY FROM LIABILITY UNDER CERTAIN CIRCUMSTANCES TO MENTAL HEALTH PROFESSIONALS."

FIRST reading copy (**WHITE**)
color

13



Mental Health Association of Montana

A Division of the National Mental Health Association

State Headquarters

555 Fuller Avenue

Helena, Montana 59601

(406) 442-4276

EXHIBIT A
DATE 1-29-87
HB # 267

1/29/87

BOARD MEMBERS

Tom Cherry—President
Helena
Vivian Gibson—Vice President
Outlook
Bonnie Hyatt-Murphy—Secretary
Livingston
Bernie Hedrick—Treasurer
Big Timber
Charles Averill
Choteau
Jim Bergman
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John Bross
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Rev. William Burkhardt
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Cliff Murphy
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Timothy Tate
Bozeman

DELEGATE DIRECTOR TO NATIONAL M.H.A.

Joan-Nell Macfadden
Great Falls

DIRECTOR-AT-LARGE

Jayne Winegardner
Billings

amendment to HB 267 - Duty to Warn

Page 2, line 9

following: "violence"

delete: "."

insert: "; and

(3) made reasonable efforts to communicate to the client at the onset of the course of treatment that confidentiality will be breached in the course of the duty to warn."

WITNESS STATEMENT

NAME Cliff Murphy BILL NO. 267
ADDRESS 1301 Rummah Rd. Bldg. 59102 DATE 1/29/8
WHOM DO YOU REPRESENT? Mental Health Assoc. of NY
SUPPORT _____ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

House Judiciary

COMMITTEE

BILL NO. HB 267

DATE

1-29-87SPONSOR Mencer

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Martin Dye	Helena		
Robert BATEEN	2212 Gold Rush Helena	X	
PAT CALBECK HARPER	301 S. OAKES, HELNA	X	
Cyril Leitch	1721 Lincoln Helena	X	
Walter Buggs	512 Logan, Helena	X	
Lynne H. Gant	1890 Colorado Gulch		X
John Boney	12 W. Meadows Billings		X
Graig Gammion	36 N. LASTO HANCE GULCH Helena	X	
Steve Walker	HELENA Mental Health Center	X	
Ted J. Dorey	Helena -- MT. Mental Health Counselors Assn.	X	
Jay McGrath	Mental Health Assn of MT	X	
Gleen F Morgan	Montana Association of School Psychologists	X	
NANCY ADAMS	HELENA MENTAL HEALTH SERVICES, INC.	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-MARY HUBER

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0170	1/26				LABOR & EMPLOYMENT	—
JONES, TOM			DELETE PROVISION SETTING LIEN PRIORITY OF WITHHOLDING TAXES			
HB0188	2/04	3/13		CONCUR		3/13
BRADLEY, DOROTHY			CLARIFYING PROCEDURE FOR ADOPTION OF CHILDREN			
HB0197	1/30	3/06		CONCUR		3/6
GRADY, ED			OPERATING MOTOR VEHICLE WITHOUT LIABILITY INSURANCE -- INCREASE PENALTIES			
HB0207	2/10	3/23		CONCUR AS AMENDED		3/26
ADDY, KELLY			DISPOSITION OF STATE TORT CLAIMS BY AGENCY PREREQUISITE TO COURT ACTION			
HB0219	3/02	3/24		CONCUR AS AMENDED		3/26
HOLLIDAY, GAY			LIMIT CIVIL LIABILITY OF NONPROFIT ORGANIZATIONS FOR RODEO INJURIES			
HB0223	2/02	3/03		CONCUR		3/3
BARDANOUVE, FRANCIS			ADOPT THE INTERSTATE CORRECTIONS COMPACT			
HB0235	2/10	3/05		CONCUR		3/5
ADDY, KELLY			CLARIFY PENALTY FOR FAILURE TO OBEY SUBPOENA			
HB0236	2/21	3/05		CONCUR AS AMENDED		3/11
ADDY, KELLY			REQUIRE JUD. NOMINATION COMM. TO MEET BEFORE VACANCY OCCURS IN SOME CASES			
HB0241	2/19	3/10		CONCUR AS AMENDED		3/24
SPAETH, GARY			REGULATE WRONGFUL DISCHARGE DISPUTES			
HB0256	2/19	3/11		CONCUR		3/11
PISTORIA, PAUL			INCREASE & CREATE FILING FEES IN CIVIL CASES TO FUND DIST. COURT OPERATIONS			
HB0267	2/03	3/04		CONCUR AS AMENDED		3/4
MERCER, JOHN			DUTY OF MENTAL HEALTH PROFESSIONALS TO WARN OF VIOLENT PATIENTS			

17

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 4, 1987

The thirty-fifth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 4, 1987 by chairman Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 267: Representative John Mercer, House District 50, Polson, presented the bill, and said it imposes a duty on mental health professionals to warn of a patient's violent behavior in certain cases, establishes the means of discharging that duty, and grants immunity from suit in other cases. (Exhibit 1)

PROPONENTS: Steve Waldron, Mental Health Centers, supports HB 267. (Exhibit 2)

Dr. Hugh Black, Montana Psychological Association, stated the duty to warn people about a mental health patient's attitude toward them can lead to liability problems. (See witness sheet)

Joan Rebich, Mental Health Counselor's Association, said the counselors support the bill but don't want an amendment that makes a psychiatrist tell a person who could be a victim, about a mentally ill person's feelings toward them because she felt that was in their code of ethics already.

Judith Carlson, Montana Association of Social Workers, is in favor of the bill.

Bill Leary, Montana Hospital Association, said the threat is only reported, not the mental diagnosis of the patient, so the hospitals feel it is not a breach of confidentiality.

Joy McGrath, Mental Health Association, gave the committee the amendment that several other proponents didn't like. (Exhibit 3) She felt the amendment will take into consideration the client's rights, so the amendment will allow the mental health professional, after the patient tells the professional that he might do something violent, to tell the patient that he will warn the victim-to-be of the patient's intent.

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 267: Senator Pinsoneault asked if the amendment wouldn't hurt the patient/professional therapist relationship. Ms. McGrath felt it was a fundamental right for the client to know about this.

Senator Yellowtail inquired how specific the threat must be before taking action. Rep. Mercer said one has to determine specific means, like details on how the client would hurt or kill a person. He said a simple sentence of "I am going to kill my wife" can't be taken seriously, but if a client said "I am going to kill my wife with a 6 inch knife", then the professional has merit to warn of harm.

Senator Crippen said a professional therapist is damned if he does tell because he loses his relationship with the patient, and damned if he doesn't tell because there could be an act of violence, which is followed by a lawsuit. Ms. McGrath said that is true, but this is a compromise because some people wanted therapists to tell a patient everytime they had a visit that they could divulge information that sounded threatening. She said what she has presented is a therapist only tells a client he might tell the authorities about the client's threat if the threat is severe. She said the professional would not start every visit with a warning of what might be said may be used against the client.

Senator Blaylock asked if this would include priests and ministers. Mr. Waldron said he felt they were not included in this bill. He said there are requirements to breach confidentiality in certain situations. Senator Blaylock asked if school counselors were included. Mr. Waldron said they were not. He said it is only mental health professionals that can make a professional decision on a person's mental well being. Senator Blaylock mentioned the Lewistown youth that killed the substitute teacher. He felt

school counselors should be included because they may know more about a student who might "blow". Mr. Waldron said school counselors are not trained to decide if someone is mentally ill.

Senator Beck asked why the threat provision is so light. He felt a simple threat should be taken seriously from a mental patient. Rep. Mercer said a threat that comes to nothing will start to be a "cry of wolf". He said no one will take a "cry wolf" client seriously until the client really does do something, and then it is too late.

Rep. Mercer closed by saying if a mentally ill person calls a hotline crisis number and gets a therapist on the other end who says, "I must warn you that anything you say may be used against you", that person will probably hang up. He felt the McGrath amendment does this. He doesn't agree with the amendment.

CONSIDERATION OF HOUSE BILL 65: Representative Ray Peck of Havre introduced House Bill 65, which amends the statute that provides for serving out traffic fines by spending time in jail. Under current law, a misdemeanor fine can be served out at \$2 a day. Under this bill, the amount credited per day is raised to \$10 a day.

PROPOSERS: Jim Haynes, Montana Magistrates Association, supports the bill.

OPPOSERS: There were none.

DISCUSSION ON HOUSE BILL 65: Senator Mazurek asked when was the last time this fine was raised. Rep. Peck said he didn't know; around 30 years.

Representative Peck closed the hearing on House Bill 65.

ACTION ON HOUSE BILL 65: Senator Blaylock moved HB 65 BE CONCURRED IN. The motion carried.

CONSIDERATION OF HOUSE BILL 139: Representative Francis Koehnke, Townsend, presented the bill, which amends the Good Samaritan law to change the amount that a person be compensated for volunteer services and still fall within the Good Samaritan exemption from liability.

PROPOSERS: Ellen Calligan, Emergency Medical Technicians, said because Montana is such a large state, many emergency assistance people are volunteers. She said many EMT daily crews are homemakers, and they do not have any liability insurance as an EMT.

Senator Brown moved the amendments in the gray bill. The motion carried. Senator Halligan moved House Bill 21 BE CONCURRED IN AS AMENDED. The motion carried.

ACTION ON HOUSE BILL 139: Senator Halligan moved House Bill 139 BE CONCURRED IN. The motion carried.

ACTION ON HOUSE BILL 267: Senator Pinsoneault moved on page 2, line 5, to strike "or" and insert the word "and", so the psychologist will warn both, the authorities and the victim. Senator Bishop said it works both ways; he felt if the victim knew of the threat, the victim might cause the violent act. Senator Beck felt the police should be the only ones to know, because they will try to contact you instead of a psychiatrist. The motion carried, with Senators Halligan, Beck and Crippen voting no.

Senator Blaylock moved Joy McGrath's amendment (exhibit 3). He agreed the patient should know when confidentiality is broken. Senator Bishop said a patient won't divulge what is on his mind if the committee passes this amendment. Senator Pinsoneault agreed with Senator Bishop. Senator Blaylock said to the five attorneys on the committee, that he knew they would probably break confidentiality to clear someone of a conviction. Senator Mazurek pointed out a priest can't break confidentiality at all. Senator Crippen felt the amendment puts the mental health professional in a tight spot. Senator Mazurek agreed with Representative Mercer on his closing about a desperate person calling a crisis center and hanging up if this amendment was adopted. Senator Blaylock believed the patient is going to a mental health session with trust for the psychiatrist, and if this amendment doesn't pass, there is a break in that trust and relationship. The motion FAILS by a vote of 2 to 8, with Senators Blaylock and Yellowtail voting yes.

ACTION ON HOUSE BILL 77: Senator Mazurek explained the agency will not get federal funds unless the legislature passes this bill. Senator Crippen moved the bill BE CONCURRED IN. The motion carried.

ACTION ON HOUSE BILL 79: Senator Brown moved the bill BE CONCURRED IN. Senator Yellowtail expressed how he did not like the \$100 a month penalty. Senator Halligan said in all of his child support cases, he has never seen a provision about a supporting parent having to pay for health coverage like this. Senator Mazurek said maybe this \$100 penalty is cheaper than a health insurance premium.

ROLL CALL

Judiciary COMMITTEE
50th LEGISLATIVE SESSION -- 1987

Date March 4

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

SUMMARY OF HB267 (MERCER)

(Prepared by Senate Judiciary Committee staff)

HB267 imposes a duty on mental health professionals to warn of a patient's violent behavior in certain cases, establishes the means of discharging that duty, and grants immunity from suit in other cases.

Section 1. Definitions.

Section 2. Duty to warn. A mental health professional has a duty to warn of violent behavior only if the patient has communicated an actual threat of physical violence by specific means against a clearly identified or reasonably identifiable victim. The duty is discharged if the mental health professional: 1) has made reasonable efforts to communicate the threat to the victim or notify the law enforcement agency closest to the patient's or victim's residence; and 2) has supplied a requesting law enforcement agency with any information about the threat.

Section 3. Immunity from liability. A mental health professional can not be held civilly liable for failing to predict, warn of, or take precautions to provide protection from a patient's threatened behavior unless he has a duty to warn of violent behavior [and presumably, does not discharge that duty].

Section 4. To be codified with general liability statutes.

COMMENTS: Generally, under common law, there was no duty to

warn of a patient's violent behavior because of the
doctor/patient privilege. However, there have been recent cases
in which liability has been imposed for failure to warn.

MONTANA COUNCIL OF MENTAL HEALTH CENTERS

**MONTANA
MENTAL HEALTH
CENTERS**

512 Logan
Helena, Mt. 59601
(406) 442-7808

SENATE JUDICIARY

EXHIBIT NO. 2

DATE March 34, 19

BILL NO. HB 267

REGION I

EASTERN MONTANA COMMUNITY
MENTAL HEALTH CENTER
1819 Main Street
Miles City, Montana 59301
(232-0734)

HB 267 - DUTY TO WARN

REGION II

GOLDEN TRIANGLE COMMUNITY
MENTAL HEALTH CENTER
Holiday Village Shopping Center
P.O. Box 3048
Great Falls, Montana 59403
(761-2100)

HB 267 creates a new liability for mental health professionals.

If a patient expresses an actual intent to do violence to someone, the mental health professional must break the confidentiality requirements in order to warn law enforcement and/or the potential victim. In addition the mental health professional must assist law enforcement in locating the potentially violent patient.

REGION III

MENTAL HEALTH CENTER
1245 North 29th Street
Billings, Montana 59101
(252-2882)

The bill also limits the liability of the professional for notifying the victim and police of the violent threat and for breaking the professional-patient confidentiality.

REGION IV

MENTAL HEALTH
SERVICES, INC.
512 Logan
Helena, Montana 59601
(442-0310)

The intent of the bill is to protect innocent potential victims from potentially violent mental patients. It also protects the mental health professional from suit for attempting to warn about the potential violence.

REGION V

WESTERN MONTANA COMMUNITY
MENTAL HEALTH CENTER
Fort Missoula T-12
Missoula, Montana 59801
(728-6870)

The overwhelming majority of patients with mental disorders are harmless. HB 267 would only cover those extremely small number of situations where there is a serious threat of danger to an innocent third party.

v2. dtwhb267.87

When all else is lost, the future still remains.—Bovee

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Mental Health Association of Montana

A Division of the national Mental Health Association

State Headquarters

201 South East Chance-Gutch - 555 Fuller

Helena, Montana 59601

(406) 442-4276

SENATE JUDICIARY

EXHIBIT NO. 3

DATE March 4, 1987

BILL NO. HB 267

BOARD MEMBERS

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Billings

Tom Cherry—President-Elect

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Great Falls

Bonnie Hyatt-Murphy—Secretary

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Billings

DELEGATE DIRECTOR TO NATIONAL M.H.A.

Joan-Nell Macfadden

Great Falls

DIRECTOR-AT-LARGE

Jayne Winegardner

Billings

3/3/87

amendment to HB 267 - Duty to Warn

Page 2, line 9

following: "violence"

insert: "; and

(3) made reasonable efforts to communicate to the client at the onset of the course of treatment that confidentiality will be breached in the course of the duty to warn."

26

DATE March 4th

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

22

NAME: Hugh M Black PhD DATE: 3-4-87

ADDRESS: 414 North Benton, Helena, MT 59601

PHONE: 406-449-3880

REPRESENTING WHOM? Montana Psychological Association

APPEARING ON WHICH PROPOSAL: House Bill 267

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: At this time judicial decisions have made the responsibility of mental health professionals to warn potential victims of their violent patients very vague. They are possibly in liability no matter what they do due to confidentiality laws. This law will clarify the responsibilities of mental health professionals. The patient needs to be informed of the limits of confidentiality when the clinical working relationship is formed, but if an amendment is made that each patient be informed of this limit at onset of treatment, the clinical decision about when to do so is overruled, which may interfere with the working relationship.

Hugh M Black PhD

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

March 4 19 87

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on

HOUSE BILL No. 267

having had under consideration

Third reading copy (blue color)

Duty of mental health professionals to warn of violent patients.
Mercer (Mazurek)

HOUSE BILL No. 267

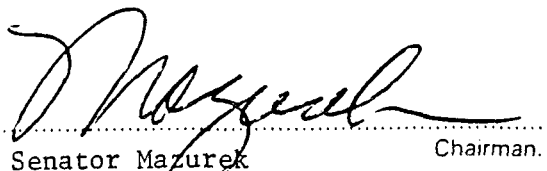
Respectfully report as follows: That

be amended as follows:

~~XXXX Page 2 XXXX Line 5.~~

1. Page 2, line 5.
Following: "victim"
Strike: "or"
Insert: "and"

BE CONCURRED IN


Senator Mazurek Chairman.

HOUSE BILL NO. 267

INTRODUCED BY MERCER, MAZUREK, HANSEN

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A DUTY TO WARN POTENTIAL VICTIMS OF A PATIENT'S VIOLENT BEHAVIOR AND GRANTING IMMUNITY FROM LIABILITY UNDER CERTAIN CIRCUMSTANCES TO MENTAL HEALTH PROFESSIONALS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definition. As used in [sections 1 through 3], "mental health professional" means:

(1) a certified professional person as defined in 53-21-106;

(2) a physician licensed under Title 37, chapter 3;

(3) a professional counselor licensed under Title 37, chapter 23;

(4) a psychologist licensed under Title 37, chapter 17; or

(5) a social worker licensed under Title 37, chapter 22.

Section 2. Duty to warn of violent behavior. A mental health professional has a duty to warn of or take reasonable precautions to provide protection from violent behavior only if the patient has communicated to the mental health professional an actual threat of physical violence by

specific means against a clearly identified or reasonably identifiable victim. The duty is discharged by a mental health professional if he has:

(1) made reasonable efforts to communicate the threat to the victim or AND notify the law enforcement agency closest to the patient's or the victim's residence of the threat of violence; and

(2) supplied a requesting law enforcement agency with any information he has concerning the threat of violence.

Section 3. Immunity from liability. (1) No monetary liability and no cause of action may arise against any mental health professional for failing to predict, warn of, or take precautions to provide protection from a patient's threatened violent behavior unless he has a duty to warn of violent behavior, as provided in [section 2].

(2) No monetary liability and no cause of action may arise against any mental health professional for disclosing confidential or privileged information in an effort to discharge a duty arising under [section 2].

Section 4. Codification instruction. Sections 1 through 3 are intended to be codified as an integral part of Title 27, chapter 1, and the provisions of Title 27, chapter 1, apply to sections 1 through 3.

-End-